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THE QUAIN IDEA OF CIVIL JUSTICE

There is a quaint old idea, still popular with some, that central government should provide and finance out of general taxation a system for the fair and prompt determination of civil disputes, both those civil and family disputes in which all parties are individuals or one or another corporate grouping, and those in which one party is government itself, whether central or local. In other words, the quaint idea is that central government should *owe* its many citizens a civil justice system, rather than *sell* one just to those to few litigants who can afford to pay the price.

At the same time, the civil justice system is being denied the funds for the IT systems essential for the service that any efficient and effective civil justice system is supposed to provide. Lord Justice Henry Brooke, when giving the annual lecture of the Society for Advanced Legal Studies on November 24, 2004, spelled out the history of broken promises of funding for required IT systems in civil courts in his penetrating, stimulating and well-received address, "Court modernisation and the crisis facing our civil courts". He should know. For 19 years he has fought in the front line of the battle for adequate funding. At the beginning of the new millennium he had high hopes that the battle was being won. Now he fears that the battle is already lost, and irretrievably so.

Lord Justice Brooke is of course entirely correct in making the point (among others) that without adequate funding for civil courts and the modern IT systems that they require, it is unthinkable that the Woolf reforms could succeed. He reminds us that *Magna Carta* had something to say about not selling justice. Additional points may be made. It is all very well for judges to manage cases, but what is the use, if lack of funding makes it impracticable for them to try those disputes which need to be tried? It is all very well to encourage ADR of disputes which need not be tried, but what of disputes that go to ADR only because the economically weaker party despairs of finding justice from a judge, only to find that ADR may favour the strong over the weak? It is all very well for central government to push towards a unified legal profession, but what is the use if the result is that litigants get an inferior service at greater cost?

Some years ago English lawyers could and did pride themselves on working within a civil justice system that rivalled the best in the world. No intelligent English lawyer could do so today. We have fallen far behind the more progressive Australian and United States jurisdictions, as well as Singapore. The Master of the Rolls is already warning publicly of the threat to foreign earnings if the Commercial Court continues to fail to receive the central funding necessary to provide the service that foreign litigants are so far continuing to come to London to find.

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What is the solution? Lord Justice Brooke is right. Funds raised by central government need to be the source of the finance to provide modern and efficient IT systems for the civil justice system. The teams already assembled for that task need to be supported, not disbanded. At the same time, politicians should stop trying to fund the civil justice system from litigants alone; and should embrace as fit for the present age that quaint old idea that central government ought to provide and finance from general funds a civil justice system that uses modern methods to meet modern needs. That idea may not win short term votes. But an efficient and affordable civil justice system is one that we cannot do without.

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